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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-899

GEORGE BANTA COMPANY, INC., BANTA DIVISION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

and

LOCAL 382, GRAPHIC ARTS INTERNATIONAL UNION, AFL-CIO,
Respondents.

BRIEF IN OPPOSITION FOR RESPONDENT LOCAL 382, GRAPHIC ARTS INTERNATIONAL UNION, AFL-CIO.

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TABLE OF CONTENTS.

	PAGE
Question Presented	2
Statement of the Case	2
Reasons for Denying the Writ	5
Conclusion	9

TABLE OF CITATIONS.

Cases.

Ford Motor Co. v. F. T. C., 547 F. 2d 954 (6th Cir. 1976), *cert. denied*, 431 U. S. 915 (1977)	6
I. L. G. W. U. v. N. L. R. B., 501 F. 2d 823 (D. C. Cir. 1974)	6
Johnson Products Company v. F. T. C., 549 F. 2d 35 (7th Cir. 1977)	6
Meilman Food Industries, Inc., 234 NLRB 698 (1978), *enforced*, 85 CCH Labor Cases ¶ 11,200 (D. C. Cir. 1979)	3
N. L. R. B. v. Katz, 369 U. S. 736 (1962)	3
Schuck Component Systems, 230 NLRB 838 (1977)	3

Statutes.

29 U. S. C. § 153(d)	7
29 U. S. C. § 158(a)(1)	3
29 U. S. C. § 158(a)(5)	3
29 U. S. C. § 160(j)	3

Regulations.

29 C. F. R. § 101.9(b)(1) 7
29 C. F. R. § 101.9(c)(1) 3
29 C. F. R. § 101.9(c)(2) 4
29 C. F. R. § 101.9(e) 8

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Respondent Local 382, Graphic Arts International Union, AFL-CIO, asks the Court to deny the petition for writ of certiorari to review the decision and judgment of the United States Court of Appeals for the Fourth Circuit.

QUESTION PRESENTED.

Petitioner's statement of the Questions Presented fails to state the issues fairly. Respondent believes the essential Question Presented should be phrased as follows:

Whether the Court of Appeals and the National Labor Relations Board properly denied petitioner's request to withdraw from a formal Board settlement of unfair labor practice charges, after all parties had signed the settlement, the Union had ended its strike, and the General Counsel had terminated administrative proceedings against petitioner—actions taken in reliance on petitioner's settlement commitments?

STATEMENT OF THE CASE.

Because petitioner's Statement of the Case fails to disclose that the Company's signed settlement commitments were the basis for the Union's decision to terminate its lawful strike and the General Counsel's determination not to proceed on the complaint issued against the Company, respondent believes the following Statement of the Case is appropriate.

Local 32-B, Graphic Arts International Union, AFL-CIO, and Local 88-L, Graphic Arts International Union, AFL-CIO, have for many years represented bindery and lithographic employees of petitioner George Banta Company, Inc. (hereafter "the Company").[1] On April 4, 1977, while negotiations were proceeding toward a new collective bargaining agreement, the Company implemented its contract proposals.

The Union filed unfair labor practice charges, and on June 27, 1977, the General Counsel to the National Labor Relations Board issued a complaint against the Company alleging that the

1. In April, 1978, Local 32-B and Local 88-L merged to form Local 382, Graphic Arts International Union, AFL-CIO, the Intervenor before the Fourth Circuit and Charging Party before the Board in this case. The two former locals and the successor local are collectively referred to as "the Union."

unilateral implementation of its proposals occurred in the absence of a bargaining impasse and thereby violated §§ 8(a)(5) and 8(a)(1) of the National Labor Relations Act, as amended (hereafter "the Act"), 29 U. S. C. §§ 158(a)(5) and (1), and that the employees' strike which commenced upon implementation was an unfair labor practice strike. *See, e.g., N. L. R. B.* v. *Katz*, 369 U. S. 736 (1962).

Hearing on the complaint was set for July 11, 1977. In addition, the General Counsel received special authorization from the Board under Section 10(j) of the Act, 29 U. S. C. § 160(j), to seek extraordinary injunctive relief in United States District Court to require rescission of the Company's allegedly illegal implementation pending resolution of the allegations of the complaint.

Hearing on the complaint was never held; the authorized injunctive relief was never sought. Instead, the Company entered into settlement discussions with the Board's Regional Director, and on July 22, 1977 signed a formal Settlement Stipulation proposed by the Region. In the Settlement Stipulation, the Company agreed to revoke certain aspects of its unilateral implementation, to offer full reinstatement to their former or substantially equivalent positions to strikers who made timely unconditional offers to return to work, and to entry of an order in the Court of Appeals enforcing the terms of the settlement.

The Union opposed the proposed settlement for several reasons, including its failure to require restoration of the contractual cost-of-living allowance clauses.[2] Pursuant to § 101.9(c)(1) of the Board's Statement of Procedures, 29 C. F. R. § 101.9(c)(1) (App. E, p. A39), the Union filed timely objections to the settlement with the Regional Director and requested a hearing on its objections. One week later, on August 12, 1977, the Region advised the Union that it had considered

2. *See, e.g., Schuck Component Systems*, 230 NLRB 838 (1977); *Meilman Food Industries, Inc.*, 234 NLRB 698 (1978), *enforced*, 85 CCH Labor Cases ¶ 11,200 (D. C. Cir. 1979).

these objections, but would recommend the settlement to the General Counsel for his approval. The Union's request for a hearing was denied on the ground that it would unnecessarily delay the remedy provided.

The General Counsel reviewed the Union's objections to the settlement, and heard oral presentations from the parties in Washington, D. C., pursuant to § 101.9(c)(2) of the Board's Statement of Procedures (App. E, pp. A39-A40). On September 20, 1977 the General Counsel approved the settlement stipulation, and submitted it to the Board for entry of an order. The Union was given until October 17, 1977 to file with the Board any further statement in support of its objections, pursuant to § 101.9(c)(2) of the Board's Statement of Procedures.

On October 8, 1977 the Union signed the settlement, and the Union members voted to terminate their strike based explicity on the Company's settlement commitments. The Company and the Board were immediately advised of this action (*See*, App. A, p. A12, n.8), and signed copies of the Settlement Stipulation were immediately served on all parties. The Company gave no indication it was contemplating "withdrawing" from the settlement, but accepted the Union's offer to return to work under the terms of the signed Settlement Stipulation. Thus, the strike was ended.

Following the strikers' return, the Company commenced a systematic campaign of illegal post-strike discrimination against the strikers. The Union filed new unfair labor practice charges on October 20, 1977, alleging that these *post-strike* reinstatement policies violated the Act.[3] The Company responded to the

3. These issues of *post-strike* discrimination are the subject of a pending Board proceeding, heard by an NLRB Administrative Law Judge in the Fall of 1978. No remedy was sought in this later proceeding for the *pre-strike* violations which were the subject of the settlement. While evidence of the pre-strike events was admitted for background purposes only, these subsequent proceedings were directed *exclusively* toward remedying *post-strike* violations by the Company.

(Footnote continued on next page.)

charges that it was now illegally discriminating in its *post-strike* policies by attempting to withdraw from its settlement commitments which were the basis of the employees' offer to return to work. On October 25, 1977 the Company wrote the Board that "in light of the great delay in approving Settlement . . . and due to new issues relative to the Settlement raised in [the new charges]" the Company "withdraws its offer of Settlement."

On July 14, 1978, the Board issued its Decision denying the Company's request to withdraw and entering the order agreed to by the parties (App. C, pp. A21-A36). On August 6, 1979 the Court of Appeals for the Fourth Circuit enforced this agreed-upon order (App. A, pp. A1-A19).

REASONS FOR DENYING THE WRIT.

1. The sole issue posed by this case—whether a respondent may withdraw from a formal Board Settlement Stipulation after the General Counsel and Charging Party have substantially relied upon respondent's settlement commitments—has never before arisen in the 45 years since the National Labor Relations Act was enacted. *See*, Co. Petition, p. 6; App. C, pp. A24-A25. It seems unlikely that it will arise again in the next 45 years. For that reason alone, the Company's petition should be denied.

2. Since the Fourth Circuit's decision is the only decision dealing with this issue, there is necessarily no conflict among

(Footnote continued from preceding page.)

Without going into detail, the following aspects of the Company's *post-strike* reinstatement policies have been found by the Administrative Law Judge to have violated the Act: 1) the exclusion of employees from available post-strike jobs based on their participation in the strike; 2) the refusal to recognize employees' contractual rights based on their participation in the strike; and 3) the discharge of certain employees based on their participation in the strike. Exceptions to the decision of the Administrative Law Judge, issued on October 15, 1979, are pending before the Board. NLRB Case No. 30-CA-4396, et al.

the circuits. The decision of the Fourth Circuit is, however, wholly consistent with decisions of other Courts of Appeals involving respondents' efforts to withdraw from formal settlement agreements before other administrative agencies. *See, Johnson Products Company* v. *F. T. C.*, 549 F. 2d 35 (7th Cir. 1977); *Ford Motor Co.* v. *F. T. C.*, 547 F. 2d 954 (6th Cir. 1976), *cert. denied*, 431 U. S. 915 (1977).[4]

3. Allowing withdrawal from an agreed settlement under these circumstances would be wholly inequitable and would substantially undermine the Board's settlement processes. The Court of Appeals correctly summarized the substantial inequity of allowing the Company to withdraw from the settlement after the other parties had relied on the Company's settlement commitments to their detriment (App. A, p. A15):

> Banta received significant immediate benefits fom its execution of the settlement stipulation. The General Counsel indefinitely suspended the scheduled hearing, failed to seek the authorized injunctive relief, and rejected the Union's claim for continued cost-of-living adjustments. The Union members terminated their strike and returned to work. The General Counsel and the Union necessarily relied on the company's corollary future commitments—to restore the pre-existing contract terms, to post a remedial notice to its employees, and to recognize the status of its employees as unfair labor practice strikers. To permit a party to accept the benefits of a settlement agreement, and then withdraw from that agreement without complying with its corresponding obligations, would subvert the settlement process. We believe that the Board properly refused to allow this abuse of its procedures, and accordingly we enforce the Board's order.

4. *I. L. G. W. U.* v. *N. L. R. B.*, 501 F. 2d 823 (D. C. Cir. 1974), cited by petitioner, is inapposite. That case is one of many involving the right of a *charging party* to a hearing on and judicial review of a General Counsel's decision to accept an informal settlement. It does not involve the "right" to withdraw from a settlement after it has been agreed to and substantially relied upon by all parties. The Court of Appeals held that it had jurisdiction to review the settlement because the General Counsel's decision to accept the settlement constituted final Board action. To the extent this analysis bears on the present case, it confirms, as the Board found, that the General Counsel's approval of the settlement resulted in a binding agreement.

Not only would withdrawal under these circumstances be inequitable, but it perverts the settlement process. Acceptance of the Company's position would mean that any respondent faced with a complaint of unfair labor practices, whether an employer or a union, could enter into a settlement with other parties and thereby induce the General Counsel and other parties substantially to modify their positions in reliance on its settlement commitments. Having thereby received benefits of critical importance in a labor dispute, the respondent could then simply announce its "withdrawal" from the settlement. As the Board and Court of Appeals properly held, to sanction this tactic would seriously cripple the Board's settlement processes.

4. The decision is consistent with the structure of the Act, contract law, and the Board's internal procedures. Section 3(d) of the Act, 29 U. S. C. § 153(d), separates prosecutorial and adjudicatory functions between the General Counsel and the Board. The Board's application of basic contract law—holding that the parties had entered into a binding agreement, with Board approval triggering the parties' duties under the agreement—is in accord with this statutory scheme. To interpret Board approval as a necessary prerequisite to establishing a binding agreement, rather than as a trigger to an already binding agreement, would intrude the Board into the General Counsel's statutory responsibility for prosecuting violations of the Act.

As the Board and Court found, this analysis is consistent with Paragraph 11 of the Settlement Stipulation, which provides for Board approval and requires compliance upon approval. Read as a whole, the settlement does not authorize withdrawal prior to Board approval, but simply states *when* the binding obligations under the agreement commence. In addition, both the settlement form itself and the Board's Statement of Procedures (§ 101.9(b)(1)) reflect that the Board is not a party to the settlement.

5. The Company's "justifications" for its attempt to withdraw are devoid of merit. The Company cavalierly argues that it has an "absolute right" to withdraw from informal Board settlements, and should therefore have the same "right" to withdraw from formal settlements. Neither "right" exists. The Company confuses its "right" to repudiate its commitments with the Board's remedies for such lawless conduct. Violation of an informal settlement results in reissuance of the initial complaint; violation of a formal settlement involves proceedings in contempt of the agreed-upon Court order. *See* § 101.9(e) of Board Statement of Procedures, 29 C. F. R. § 101.9(e) (App. E, pp. A40-A41). Neither process contemplates a "right to withdraw" from a settlement after entry and substantial reliance by the other parties.

There was no "delay" in approval of the settlement. It was expeditiously processed consistently with the Board's Statement of Procedures. Indeed, the Regional Office further expedited its processing by refusing the Union's request for a hearing on its objections. The Company was well aware of the time-table for approval of the settlement when it entered into it.

Finally, subsequent Board proceedings involving the Company's *post-strike* violations of the Act are irrelevant. The present case exclusively involves the legality of the Company's *pre-strike* action of April 4, 1977; it is the sole proceeding seeking remedy for these pre-strike violations of the Act.

The complaint in the subsequent proceeding, currently before the Board, seeks no remedy for these pre-strike violations. The decision and proposed order recently issued by the Administrative Law Judge in the subsequent case are explicitly limited to post-strike violations. The Company's argument that proceedings against it for *post-strike* violations of the Act insulate it from enforcement of its agreement to remedy *pre-strike* violations must be rejected.

CONCLUSION.

For the fore-going reasons, Respondent Local 382, Graphic Arts International Union, AFL-CIO, prays that the petition for a writ of certiorari be denied.

Respectfully submitted,

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January 10, 1980.